



Billing Code: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Number FWS-HQ-ES-2013-0055]

[FXES111809F2070B6]

RIN 1018-AY76

**Endangered and Threatened Wildlife and Plants; Listing the Southern White Rhino
(*Ceratotherium simum simum*) as Threatened**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are adopting as a final rule an interim rule to list the southern white rhino (*Ceratotherium simum simum*) as

threatened under the authority of section 4(e) of the Endangered Species Act of 1973, as amended (Act), due to the similarity in appearance with the endangered Javan (*Rhinoceros sondaicus*), Sumatran (*Dicerorhinus sumatrensis*), Indian (*Rhinoceros unicornis*), black (*Diceros bicornis*) and northern white rhino (*Ceratotherium simum cottoni*). The interim rule was necessary, as differentiating between the horns and other products made from the southern white rhino and the endangered Javan, Sumatran, Indian, black, and northern white rhino is difficult for law enforcement to determine without genetic testing, decreasing their ability to enforce and further the provisions and policies of the Act. This similarity of appearance has resulted in the documented trade of listed rhinoceros species, often under the guise of being the unprotected southern white rhinoceros, and this difficulty in distinguishing between the rhino species protected under the Act and the southern white rhino constitutes an additional threat to all endangered rhinoceros species. The determination that the southern white rhino should be treated as threatened due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve all endangered rhino species. Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without substantive change.

DATES: Effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], we are adopting as a final rule the interim rule published at 78 FR 55649 on September 11, 2013.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule we published in the **Federal Register** on September 11, 2013 (78 FR 55649–55656, <http://www.regulations.gov> Docket No. FWS–HQ–ES–2013–0055), we listed the southern white rhino (*Ceratotherium simum simum*) (SWR) as threatened under the “similarity of appearance” provisions of the Endangered Species Act of 1973, as amended (Act), 16 U.S.C. 1531 et seq. The effective date of the listing was September 11, 2013. We amended subpart B of chapter I, title 50 of the Code of Federal Regulations at § 17.11(h), by adding the southern white rhinoceros to the List of Endangered and Threatened Wildlife due to a similarity of appearance. Public comments on the interim rule were received on or before October 11, 2013.

Comments

We received 32,139 comments from both the public and nongovernmental institutions; all but two commenters supported the interim rule. One comment

conditionally supported the interim rule; the other did not support the interim rule. A brief description of the two comments and our responses are provided below.

Comment: Both commenters expressed concern regarding the permitting requirements related to the legal take and importation of trophy specimens. One of the commenters also requested a special rule (under section 4(d) of the Act) that would waive the “enhancement” requirement associated with the ESA importation permit for SWR that are listed as Appendix I under the Convention on International Trade in Endangered Species (CITES), including sport-hunted trophies imported from Namibia and Zimbabwe.

Response: The Service’s regulatory criteria for issuance of permits for any activity otherwise prohibited with a species designated as endangered or threatened due to its similarity of appearance are found at 50 CFR 17.52(b). Under these criteria, the Director shall consider, in addition to the general permitting criteria found at 50 CFR 13.21(b), whether the information submitted by the applicant identifying the species and the origin of the wildlife or plant in question appears reliable and whether it adequately identifies the wildlife or plant so as to distinguish it from any Endangered or Threatened wildlife or plant. Therefore, ESA permits for importation of SWRs from populations listed under CITES Appendix I may be issued according to the regulatory criteria mentioned above, and there is no requirement for the Service to find that the otherwise prohibited activity involving these specimen of SWRs enhances the survival or propagation of the species .

Current requirements to import legally obtained SWRs listed as CITES Appendix I already require a CITES permit from the country of origin, as well as CITES import permit issued by the U.S. For SWRs exported from South Africa or Swaziland, which are currently the only populations listed in Appendix II of CITES, no ESA regulatory permit for importation is required, provided that the specimen was legally exported from one of those two countries, the importation was not made in the course of a commercial activity, and other applicable requirements under section 9(c)(2) of the Act are met; a CITES Appendix II permit from the country of export would still be required for these specimens. More information regarding permitting requirements can be found at <http://www.fws.gov/permits/ImportExport/ImportExport.html>.

Comment: One of the commenters questioned why the Service lists foreign species.

Response: The Act requires the Service to list “species” as endangered if they are in danger of extinction, or threatened if they are likely to become endangered in the foreseeable future, regardless of the country in which the species lives. By regulating import; export; take within the U.S., the territorial sea of the U.S, or upon the high seas; certain activities for species taken in violation of the ESA’s prohibitions on take and import/export; delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce, the United States ensures that people under the jurisdiction of the

United States do not contribute to the further decline of species that meet the definition of threatened or endangered under the Act.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without substantive change. However, we are taking this opportunity to correct a nonsubstantive omission in the regulatory text. We are adding a number to the “When Listed” column of the List of Endangered and Threatened Wildlife to provide the public with the **Federal Register** citation and date of publication of the interim rule.

Required Determinations

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

The Service has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA). The Council on Environmental Quality's (CEQ) regulations implementing NEPA, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on the human environment. CEQ's regulations further require Federal agencies to adopt NEPA procedures, including the adoption of categorical exclusions for which neither an environmental assessment nor an environmental impact statement is required (40 CFR 1507.3). The Service has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with the Department's NEPA regulations at 43 CFR 46.210(i), which categorically excludes "[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature." In addition, the Service has determined that none of the extraordinary circumstances listed under the Department's regulations at 43 CFR 46.215, in which a normally excluded action may have a significant environmental effect, applies to this final rule.

References Cited

A complete list of all references cited in the interim rule is available on the Internet at *<http://www.regulations.gov>* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Author

The primary author of this rule is the staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we are adopting as a final rule the interim rule that amended part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations and that was published at 78 FR 55649 on September 11, 2013, with the following changes:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for “Rhinceros, southern white” under Mammals in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
* * * * *							
Rhinoceros, southern white	<i>Ceratotherium simum simum</i>	Botswana, South Africa, Swaziland, Zambia, Zimbabwe	Entire	T(S/A)	832	N/A	N/A
* * * * *							

Date: April 4, 2014

Daniel M. Ashe

Director, U.S. Fish and Wildlife Service

[FR Doc. 2014-11537 Filed 05/19/2014 at 8:45 am; Publication Date: 05/20/2014]